

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
Duncan Hunter,)
Hunter for President, Inc. and Bruce Young,)
in his official capacity as Treasurer;)
Peace Through Strength Political Action)
Committee and Meredith G. Kelley,)
in her official capacity as Treasurer)

MUR 5908

RECEIVED
FEDERAL ELECTION
COMMISSION
2010 MAY -3 PM 3:07
CELA

GENERAL COUNSEL'S REPORT #2

I. ACTIONS RECOMMENDED

(4) Find no reason to believe PTS PAC violated the Act with respect to allegations concerning its television advertisements.

II. INTRODUCTION

Between November 2006 and January 2007, PTS PAC, a non-connected leadership PAC formed and controlled by then-Congressman Duncan Hunter, paid approximately \$10,200 for travel expenses incurred by Hunter while he made public appearances in connection with his yet-

1 to-be officially declared candidacy for the 2008 Republican presidential nomination. These
2 expenses, which were never reimbursed to PTS PAC, were not reported as in-kind campaign
3 contributions by Hunter's presidential exploratory committee or principal campaign committee
4 after he filed his Statement of Candidacy and registered his campaign committees on January 23
5 and 25, 2007, respectively.

6 The Commission found reason to believe that PTS PAC made excessive contributions to
7 the Hunter Committee, in violation of 2 U.S.C. § 441a(a)(2), and that Hunter and the Hunter
8 Committee accepted and failed to report these excessive in-kind contributions in violation of
9 2 U.S.C. §§ 441a(f) and 434(b). See MUR 5908 Factual and Legal Analyses. Because of
10 uncertainty as to whether the previously unreported in-kind contributions may have triggered
11 Hunter's candidate status prior to mid-January 2007, the Commission also found reason to
12 believe that Hunter and the Hunter Committee failed to timely file its Statement of Candidacy,
13 Statement of Organization and disclosure reports, as required by 2 U.S.C. §§ 432(e)(1) and
14 434(a), and authorized an investigation. Hunter F&LA at 7.

15 During the investigation, Respondents submitted documents and written responses to our
16 requests for information, including affidavits from Duncan Hunter, Committee Treasurer Bruce
17 Young, and Roy Tyler, Hunter's assistant and supporter. See Hunter RTB Response dated April
18 8, 2009; PTS PAC RTB Response dated April 9, 2009; Consolidated Supp. RTB Response dated
19 May 27, 2009. In addition to reviewing Respondents' submissions, we examined disclosures of
20 receipts and disbursements related to activities by Hunter and PTS PAC for the November 2006
21 through January 2007 time period. The investigation confirmed that PTS PAC violated 2 U.S.C.
22 §§ 441a(a)(2) and 434(b), by making and failing to report excessive in-kind contributions to the
23 Hunter Committee and that Hunter and the Hunter Committee violated 2 U.S.C. §§ 441a(f) and

1 434, by accepting and failing to report PTS PAC's excessive in-kind contributions. It also
2 appears that Hunter and the Hunter Committee should have filed a Statement of Candidacy as
3 required by 2 U.S.C. § 432(e)(1) at least a week earlier than the actual filing on January 23,
4 2007.

5 The First General Counsel's Report recommended that the Commission take no action at
6 that time with regard to the complaint's allegations as to a series of PTS PAC television
7 advertisements about immigration and national security issues that were run in several early
8 2008 primary states in December 2006 and January 2007. See First GCR at 3, 12-14. Although
9 the content and timing of the advertisements appeared to have some nexus with Hunter's soon-
10 to-be declared campaign, in that they were narrated by Hunter and aired in some of the primary
11 states, was not sufficient basis for this Office to recommend the Commission find reason to
12 believe the advertisements violated the Act. The investigation has produced no additional basis
13 for finding advertisements violated the Act. Accordingly, we now recommend that the
14 Commission find no reason to believe PTS PAC violated the Act with respect to these television
15 advertisements.

16
17
18
19
20
21 **III. FACTUAL BACKGROUND**

22 Duncan Hunter was a member of Congress representing California's 52nd Congressional
23 District, and a candidate for the 2008 presidential election. Peace Through Strength PAC is a

1 non-connected, multi-candidate political committee established by Hunter as his Leadership
2 PAC and has been registered with the Commission since 2002. Duncan Hunter is the honorary
3 chairman of PTS PAC, which states that its mission focuses on defense, border security, and
4 trade issues.

5 From November 2006 through early January 2007, Duncan Hunter travelled to key
6 presidential primary states, and gave speeches on homeland security, foreign trade and
7 immigration policies, which were topics central to his presidential campaign platform, as well as
8 the stated mission of PTS PAC. Although the responses to the complaint argued that the travel
9 was on behalf of PTS PAC, during the investigation Hunter acknowledged that his "interest in
10 running for President was no secret and was the subject of much discussion," during each of
11 these PTS PAC funded trips. Affidavit of Duncan Hunter ("Hunter Aff.") at 1. Hunter also
12 acknowledges that he selected Iowa, New Hampshire and South Carolina as speaking venues
13 was because he "was preparing for the Presidential race," and that the media reports about
14 statements he made with regard to running for the Republican presidential nomination (that were
15 recited in some detail in the Commission's Factual and Legal Analysis) were "accurate." *Id.* In
16 his affidavit Hunter states, "Obviously, my Presidential interests were known and reported by the
17 news." *Id.*

18 Hunter admits that he used the PTS PAC funded trips to publicize his candidacy, test his
19 speaking points, and gauge support for his presidential campaign. Hunter likened his experience
20 in running for president to that of when he joined the Army, and compares the public and media
21 events that occurred before formally announcing his candidacy to the "basic training" a soldier
22 undertakes in order to be fully prepared for military service. *Id.*

PTS PAC paid for all of the expenses related to Hunter's travel to these events, totaling approximately \$10,200, none of which were reimbursed by the Hunter Committee. By January 5, 2007, Hunter had accepted more than \$5,000 in in-kind contributions from PTS PAC.¹ Hunter registered his presidential exploratory committee with the Commission on January 12, 2007, filed his Statement of Candidacy on January 23, 2007, and registered his principal campaign committee for his presidential campaign, Hunter for President, Inc., with the Commission on January 25, 2007. The Committee filed its first disclosure report on April 15, 2007.

Chart A below lists the public events to which Hunter travelled during the relevant time period and the expenditures incurred in connection therewith, provided by the Hunter Committee's Treasurer in response to our investigation.

Chart A

Dates	Event/Location	Committee Expenditures
Nov. 20, 2006	Speech/Meetings Dallas, TX	\$189
Nov. 28, 2006-Dec. 1, 2006	Speeches/Tour Charlotte, NC and Charleston, SC	\$809
Dec. 9-11, 2006	Reception/Meeting North and South Carolina	\$1,027
Dec. 13-17, 2006	Pheasant Hunt/Meetings/ Radio appearances Iowa	\$1,545
Jan. 5-8, 2007	Meetings/Radio appearance New Hampshire	\$4,857
Jan. 12-16, 2007	Meetings/March Columbia, SC	\$1,816
	TOTAL	\$10,243

The Committee admits that all of the expenditures were paid by PTS PAC and were not reimbursed by the Hunter Committee. Young Aff. at 1-2.

On November 20, 2006, Hunter travelled to Dallas, Texas to "talk to a group of political leaders and pastors" about border patrol and immigration issues. Hunter Aff. at 1. He states the

¹ In its reason to believe findings the Commission determined that, based on Hunter's public statements, he had made the decision to run as a candidate for president as early as December 11, 2006.

trip's purpose was to gauge support for a proposed border fence law. *Id.* The trip was paid for by PTS PAC and reportedly cost \$189. Affidavit of Bruce Young ("Young Aff."), Attachment 4.

On November 28, 2006 through December 1, 2006, Hunter travelled to North and South Carolina for several events at which he shared his views on public policy issues. Hunter Aff. at 1. During the trip, including in a speech at Charleston Southern University, Hunter indicated that he was running for president. See Consolidated Supp. RTB Response at 3. Hunter also visited with Congressman Robin Hayes (N.C. 8th Cong. Dist) and toured the NUCOR Steel facility. *Id.* During this trip, Hunter developed the script for his "China is cheating on trade, with national security implications" commercials, which later aired in several presidential primary states. The entire trip was funded by PTS PAC and cost \$809. Young Aff., Attachment 4. Hunter returned to North and South Carolina, on December 9-11, 2006, for several meetings and a reception hosted by the Spartanburg County Republican Party Chairman. PTS PAC Response, Attachment 7. This trip was also funded by PTS PAC and cost \$1,027. Young Aff. at Attachment 4.

From December 13 through December 15, 2006, Hunter travelled to Iowa for several events, including a pheasant hunt with "U.S. military veterans of Iraq and Afghanistan." Hunter Aff. at 1. Though Hunter asserts that the pheasant hunt served only as an opportunity to honor veterans with no political purpose, he announced the event on a local radio broadcast while discussing his presidential campaign platform issues. *Id.*; see also Affidavit of Roy Tyler ("Tyler Aff.") at 1. Hunter also met with Congressman Steve King (Iowa 5th Cong. Dist.) and other political leaders, and attended a pancake breakfast during which he discussed his presidential campaign. Hunter Aff. at 1. All expenses were paid by PTS PAC and totaled \$1,545. Young Aff. at Attachment 4.

1 From January 5 through January 8, 2007, Hunter travelled to New Hampshire, to gauge
2 receptivity to his message on trade. Hunter Aff. at 1. He also toured the Wilcox Company, a
3 manufacturer of high tech weapons systems for the military, had public events at several
4 restaurants, and did interviews on local television and radio stations. *Id.* PTS PAC paid for the
5 trip, which cost \$4,857. Young Aff. at Attachment 4.

6 In January 12 through January 16, 2007, Hunter returned to South Carolina for the "Stand
7 Up for Life" march and rally, where he participated as a special guest. Consolidated Supp. RTB
8 Response, Attachment 7. During the visit, Hunter also met with the First Vice Chairman of the
9 South Carolina Republican Party, and was interviewed by local television and radio stations, as
10 well as the Glenn Beck Radio Show. *Id.* PTS PAC paid for the trip, which cost \$1,816. Young
11 Aff. at Attachment 4.

12 **IV. ANALYSIS**

13 **A. PTS PAC's Excessive In-Kind Contributions**

14 If an individual who has been "testing the waters" subsequently becomes a candidate, the
15 Act provides that all funds received or payments made during the "testing the waters" period
16 comply with the limitations and prohibitions of the Act, and must be reported on their campaign
17 committee's first disclosure report. *See* 2 U.S.C. §§ 441a(a)(2) and 434(a).

18 The Act also states that no multicandidate political committee shall make contributions to
19 any candidate and his authorized political committee, which in the aggregate, exceeds \$5,000 per
20 calendar year, *see* 2 U.S.C. § 441a(a)(2)(A), and no candidate or political committee shall
21 knowingly accept contributions in violation of the limitations and prohibitions of the FECA.
22 2 U.S.C. § 441a(f).

1 PTS PAC and the Hunter Committee admit that PTS PAC paid for all expenses
2 associated with Hunter's travel and participation in public events during the November 2006 –
3 January 2007 time period. PTS PAC RTB Response at 3-4, Young Aff. at 1-2. These
4 expenditures totaled approximately \$10,243, which resulted in in-kind contributions that
5 exceeded the limitations set forth in the Act by \$5,243. Young Aff., Attachment 2.

6 Although Respondents initially maintained that the travel and events at issue were related
7 only to PTS PAC activities, Hunter admits that his presence in the early primary states during the
8 relevant time period was aimed at raising his national profile and testing public response to his
9 presidential platform, because "that is where the national media focus was." Hunter Aff. at 1.
10 Hunter's acknowledgement that his presence in primary states was to capture media attention
11 and the national spotlight, in connection with his upcoming presidential candidacy, undercuts
12 any claim that the trips were solely on behalf of PTS PAC.

13 Without abandoning their position, the Hunter Committee has suggested that the
14 expenditures be allocated on a 40%-60% basis, with the larger percentage attributable to PTS
15 PAC, but offer no basis for this ratio as opposed to any other. See Young Aff. at ¶¶ 8-9.
16 Respondents provide no evidence to demonstrate that Hunter would have been present at any of
17 those events, absent the presidential campaign.² These events were integral parts of Hunter's
18 preparations to run for president because they served as venues for publicizing his campaign
19 platform and for increasing his support and national profile in the primary states, without serving
20 any other purpose.

² In fact, the pheasant hunt is the only event that Hunter had participated in during prior years, when there was no presidential campaign (although the other hunting events occurred in the non-primary states of California, Arizona, New Mexico and Texas). While we might consider a reduction in the allocation percentage for these events should the Hunter Committee prove the related expenditures were incurred while Hunter was acting in his capacity as PTS PAC chairman, at this point we recommend 100% attribution to the Hunter Committee.

1 The information gathered from the investigation supports the conclusion that Peace
2 Through Strength Political Action Committee and Meredith G. Kelley, in her official capacity as
3 Treasurer, violated 2 U.S.C. § 441a and 11 C.F.R. § 110.2(b)(1) by making excessive in-kind
4 contributions to Duncan Hunter for his presidential campaign and that Duncan Hunter and
5 Hunter for President, Inc. and Bruce Young, in his official capacity as Treasurer, violated
6 2 U.S.C. § 441a(f) by accepting excessive contributions from Peace Through Strength Political
7 Action Committee.

8 **B. Hunter's Status as Presidential Candidate**

9 The Act states that an individual becomes a candidate for federal office, thus triggering
10 the Act's registration and reporting obligations, when his or her campaign either receives \$5,000
11 in contributions or makes \$5,000 in expenditures. 2 U.S.C. § 431(2). As an exception to this
12 general rule, an individual may raise or spend more than \$5,000 without triggering candidate
13 status only if he or she is engaged in permissible "testing the waters" activities, which include,
14 but are not limited to, conducting polls, making telephone calls and travel, and if the individual
15 gives no indication that a decision to run has already been made. See 11 C.F.R. §§ 100.72(a) and
16 100.131(a).

17 Although he claims that the decision to become a candidate was not made until he
18 officially announced his candidacy on January 25, 2007, Duncan Hunter acknowledges in his
19 affidavit that the selection of the events and forums was based on the upcoming presidential
20 primaries in those states. Therefore, as the Commission determined on January 28, 2009, Hunter
21 decided to run for president no later than December 11, 2006, and became a candidate when he
22 received at least \$5,000 in in-kind contributions from PTS PAC, on or about January 5, 2007.

C. Reporting Violations

The Act provides that a political committee must file reports of all receipts and disbursements, including contributions from other political committees. *See* 2 U.S.C. § 434(a) & (b). Once an individual achieves candidate status by raising or spending more than \$5,000 and engaging in activities indicating that he or she has decided to run for a particular office, the candidate and his committee are subject to registration and reporting requirements of the Act.

Within fifteen days of becoming a candidate, the individual must file a Statement of Candidacy with the Commission that designates the candidate's principal campaign committee. 2 U.S.C. § 432(e)(1); *see also* 11 C.F.R. § 101.1(a). The principal campaign committee must file a Statement of Organization no later than ten days after it has been designated by the candidate, 2 U.S.C. § 433(a), and disclose all reportable amounts from the beginning of the "testing the waters" period in the first financial disclosure report filed by the committee, regardless of the date the funds were received or the payments made. *See* 2 U.S.C. § 434(a)(3), 11 C.F.R. § 104.3(a) and (b). The candidate has a duty to maintain a record of contributions received and expenditures made while "testing the waters," and report those contributions and expenditures once he or she registers his or her principal campaign committee with the Commission. 11 C.F.R. §§ 100.72 and 100.131.

Although Hunter achieved candidate status as early as January 5, 2007 and should have filed his Statement of Candidacy within fifteen days, he did not file his Statement of Candidacy until January 23, 2007.³ Because the Statement of Candidacy was only three days late, a period significantly shorter periods than the late-filed Statements of Candidacy for which the Commission sought a \$500 penalty in MURs 5363 (Sharpton) and 5693 (Aronsohn), we are not

³ The Committee filed its Statement of Organization on January 25, 2007, which is within 10 days of the date the Statement of Candidacy should have been filed.

1 recommending the Commission pursue a civil penalty for these violations. The Committee did
2 not file any disclosure reports with the Commission until it filed its 2007 April Quarterly Report,
3 and disclosed no receipts or disbursements for activity prior to January 20, 2007. The
4 investigation concluded that the Hunter Committee received approximately \$10,200 in-kind
5 contributions that remain unreported. Thus, the investigation confirmed that Duncan Hunter and
6 Hunter for President, Inc. and Bruce Young, in his official capacity as Treasurer, violated 2
7 U.S.C. §§ 432(e)(1), 433(a) and 434(a) by failing to file a Statement of Candidacy and disclosure
8 reports within the time period required by the Act. Additionally, the facts demonstrate that
9 Peace Through Strength Political Action Committee and Meredith G. Kelley, in her official
10 capacity as Treasurer, failed to report its in-kind contributions to the Hunter Committee, in
11 violation of 2 U.S.C. § 434(b).

12 **D. Television Advertisements**

13 The Commission previously took no action regarding the allegation that PTS PAC paid
14 for television advertisements that were "designed to publicize Hunter's intention to campaign for
15 federal office," or the claim that PTS PAC failed to disclose advertisements that aired in Iowa
16 and New Hampshire in December 2006.⁴ Hunter F&LA at 5-7. We found no new information
17 to suggest that the PTS PAC's advertisements were in-kind contributions or coordinated with the
18 Hunter Committee, or that PTS PAC improperly reported expenditures related to these
19 advertisements.

20 Chart B below reflects all of the media buys made by PTS PAC during 2006-2007 and
21 the dates of disbursements for those buys, as disclosed by PTS PAC to the Commission:

⁴ The first media buy disbursements were reported by PTS PAC in its 2007 Mid-Year Report, with the first dates of disbursement in Iowa and New Hampshire being January 19, 2007, for media ad buys in both states.

Chart B

Number of Ad Buys	State	Disbursement Dates	Total Amount of Disbursements
15	South Carolina	12/14/06-2/26/07	\$99,940.25
2	Iowa	1/19/07 & 2/7/07	\$10,510
3	New Hampshire	1/19/07, 2/5/07 & 2/7/07	\$1,508.75
1	South Dakota	12/14/06	\$1,000
1	North Carolina	12/19/06	\$5,005
2	District of Columbia	1/22/07 & 2/13/07	\$10,065
1	California	1/29/07	\$1,515
1	Michigan	4/25/07	\$10,150
1	Oregon	4/30/07	\$10,000

The Peace Through Strength commercials carried the themes of maintaining the U.S. industrial base, securing our borders, and staying strong militarily that were promoted by PTS PAC and the campaign. Notwithstanding the peripheral impact on Hunter's profile in the presidential contest, PTS PAC's advertisements were nonetheless legitimate expressions of PTS PAC's longstanding policy positions and consistent with its mission. *Id.* Though the television advertisements are narrated by Hunter, the advertisements did not expressly advocate the election of Hunter and promoted policy positions supported by PTS PAC since its inception. Additionally, the media ad buys did not meet the Act's coordination test because they did not air within 120 days of the election, *see* 11 C.F.R. § 109.21(c), or even correlate with Hunter's presence in the primary states. PTS PAC F&LA at 5-6. The television advertisements did not begin airing until mid-to-late December 2006, while Hunter's public activities and statements supporting his presidential bid began as early as November 2006. Also, the television advertisements aired in several jurisdictions that were not early primary states (e.g., South Dakota, North Carolina, Michigan, Oregon, and the District of Columbia), and to which he did not travel or make public appearances or statements on behalf of the campaign.

While the themes in the PTS PAC advertisements are similar to the issues promoted by the Hunter campaign, they did not expressly advocate his election and were not coordinated with the

1 campaign. Finally, though the Complaint alleged that the PTS PAC's television advertisements
2 were run in Iowa and New Hampshire in December 2006, our review of Respondents'
3 submissions did not uncover any new information to support this allegation, or the claim that
4 PTS PAC failed to disclose all of its media buys. In consideration of these facts, we now
5 recommend the Commission find no reason to believe that the allegations that Peace Through
6 Strength Political Action Committee and Meredith G. Kelley, in her official capacity as
7 Treasurer, violated 2 U.S.C. §§ 434(b) and 441a(a)(2) and 11 C.F.R. § 104.3(b).

MUR 5908 (Hunter)
General Counsel's Report #2

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23

10044274523

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29

VI. RECOMMENDATIONS

3. Find no reason to believe that Peace Through Strength Political Action Committee and Meredith G. Kelley, in her official capacity as Treasurer, violated 2 U.S.C. §§ 434(b) and 441a(a)(2) with respect to the television advertisements;

5. Approve the appropriate letters.

5/3/2010

Date

Thomasenia P. Duncan
General Counsel



Kathleen Guith
Deputy Associate General Counsel for
Enforcement



Mark D. Shonkwiler
Assistant General Counsel



Camilla Jackson Jones
Attorney